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### Justice and Global Environment Challenges

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# Global Justice Academy Blog

Global Justice Academy, University of Edinburgh

## JUSTICE AND GLOBAL ENVIRONMENTAL CHALLENGES: THE PROMISES OF BENEFIT- SHARING

Posted on **December 16, 2013** by **tkelly**

A guest blog by **Dr Elisa Morgera** and **Tom Gerald Daly**.

*In this article, **Dr. Elisa Morgera** and **Tom Gerald Daly** explore the role that ‘Benefit-Sharing’ might be able to play in addressing the environmental challenges associated with the use of natural resources. The authors pose important questions about Benefit-Sharing and its potential to contribute to the protection and sustainability of natural resources, whilst enabling opportunities for the growth of communities, indigenous peoples and developing countries in culturally-sensitive and equitable ways. Could Benefit-Sharing present a tool to address these issues?*

“[Y]ou’re on earth. There’s no cure for that!”

Hamm in *Endgame*

— Samuel Beckett

### 1. 1 Equity Issues in Tackling Environmental Challenges

It is no secret that international climate change negotiations are not making significant progress – mostly due to different perceptions and visions of the appropriate balance of responsibilities and allocation of costs among different countries. On the ground, a myriad of climate change response measures (renewable energy development, forest management for reducing greenhouse gas emission, etc.) raise concerns about actual and potential negative

impacts on the broader environment and on human rights.

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Across the board of environmental issues affecting our planet, global environmental protection is bedevilled by formidable questions concerning the Global North/South divide, the tensions between development and environmental protection, social and economic equality, human rights, different historic contributions to current global environmental challenges, asymmetries of power, and justice.

The evolving regulatory framework to address global environmental challenges raises equity and justice concerns. These concerns hinder progress at all levels; the functioning of a highly complex web of legal measures, involving multi-level relationships between governments, private companies, bilateral donors and NGOs, as well as indigenous peoples and local communities is hampered by:

- Vested interests and power asymmetries;
- Different visions among states of the appropriate balance of responsibilities and allocation of costs in addressing environmental challenges; and
- Fragmented efforts and limited effectiveness.

In particular, while environmental management is increasingly seen as an area that presents significant opportunities for business development, job creation and public sector savings, acute equity concerns pivot on the accompanying risks. First, *among* states, the risk of a profit-driven and high-tech environmental agenda which tends to side-line developing countries; and second, *within* states, the risk of the marginalisation of indigenous peoples and local communities and their contribution to environmental management, which is difficult to quantify in nakedly economic terms.

However, faced with such complex and difficult terrain, it is not an option to give in to pessimism; to say, like Hamm in *Endgame*, that there's simply no cure. Improvements to the regulatory framework can, and should, be explored.

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*[2000-year old terraces that were carved into the mountains of Ifugao in the Philippines.]*

## 1.2 The Promises of Benefit-sharing

The idea of “benefit-sharing” may provide a new approach to these questions. Benefit-sharing basically implies that the States and local people that preserve the environment should benefit (in monetary, but also social, cultural and environmental terms) from the use of natural resources (such as forests, seeds, fish, minerals) involving others (local governments, NGOs or foreign companies, for example). In this sense, benefit-sharing is expected to contribute to forge fair and long-term partnerships among those deciding about, involved in and affected by the use of natural resources.

Benefit-sharing therefore entails not only assessing burdens, costs and risks, but also exploring *constructive, proactive and culturally-sensitive* opportunities to address environmental challenges while respecting and contributing to the realization of the human rights of indigenous peoples and local communities, and respecting the views and responding to the needs of developing countries.

Although benefit-sharing is increasingly deployed in a variety of international environmental agreements (biodiversity, climate change, oceans, land and agriculture) and also in human rights and corporate accountability instruments, no single vision or comprehensive understanding exists of its contribution to equitably address global environmental challenges. Can benefit-sharing realise its promise of serving as a creative legal tool for equitably addressing these challenges? To what extent can it accommodate the special circumstances, cultural preferences and vulnerabilities of developing countries, and of indigenous peoples and local communities, in transitioning to the green economy? At present, there is no systematic study of whether benefit-sharing can theoretically and practically work as a means of finding consensus among States on how to address global environmental challenges, and of protecting the rights of indigenous peoples to participate in decision-making on natural resource development and continue to have access to natural resources for their cultural, spiritual and livelihood needs. Several questions remain

unanswered:

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- How is benefit-sharing utilised under different international treaties?
- What does benefit-sharing mean and how does it work in different countries and localities?
- Does benefit-sharing effectively support fairness in the areas of biodiversity, climate change, oceans and agriculture at different levels?
- What is the role of law in ensuring an equitable approach to environmental management?
- What are the roles and responsibilities of different organisations in promoting the idea of benefit-sharing?

### 1.3. New Project at Edinburgh Law School

A new five-year project at Edinburgh Law School, commencing in November 2013, seeks to address these equity issues by investigating benefit-sharing as an under-theorised and little-implemented regulatory approach to tackling environmental challenges. The project is titled: "BENELEX – Benefit-sharing for an equitable transition to the green economy: the role of law" and is led by Dr Elisa Morgera (School of Law) and funded by the European Research Council.

A project website will be launched in early 2014. For further information, please contact Annalisa Savaresi: [annalisa.savaresi@ed.ac.uk](mailto:annalisa.savaresi@ed.ac.uk)

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